

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAP 1 8 1998

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Iowa Communications Network)	AAD/USB File No. 98-37
Petition for Declaratory Ruling)	

REPLY COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") submits these Reply Comments in opposition to the "Petition for a Declaratory Ruling" that the Iowa Communications Network ("ICN")¹ should be eligible to receive universal service support under Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

ICN is a state-owned and operated telecommunications network which provides services to private and public schools, colleges, and universities and to

¹ Letter to Magalie Roman Salas, Federal Communications Commission ("Commission") from Kenneth D. Salomon and J.G. Harrington, Counsel for the Iowa Telecommunications and Technology Commission operating the Iowa Communications Network, dated Feb. 4, 1998 ("Petition"). Public Notice, Iowa Telecommunications and Technology Commission Seeks Determination that the Iowa Communications Network is a Provider of Telecommunications Services to Schools, Libraries, and Rural Health Care Providers, CC Docket No. 96-45, AAD/USB File No. 98-37, DA 98-294, rel. Feb. 13, 1998. Due to the brevity of these Reply Comments and the lack of headings, a Table of Contents is not included herein as required by the Public Notice. U S WEST is filing its electronic submission via diskette.

health care facilities in the State of Iowa.² Even though ICN does not offer its services to the general public, ICN contends that it “should” be regarded as a common carrier and, therefore, eligible for support.³ U S WEST disagrees.

In the Universal Service Order,⁴ the Commission concluded that “telecommunications service” is intended to encompass only telecommunications provided on a common carrier basis where a carrier holds itself out to provide service “indifferently” to all potential users.

In the Fourth Order on Reconsideration,⁵ the Commission made it clear that state telecommunications networks “do not meet the definition of ‘telecommunications carrier’” and, therefore, “state telecommunications networks are not eligible to receive direct reimbursement from the support mechanisms pursuant to section 254(h)(1)(B). Section 254(h)(1)(B) provides that only telecommunications carriers may receive support for providing schools and libraries with the telecommunications supported under section 254(h)(a)(B).” The

² Petition at 3-4.

³ See id. And see Comments of the Iowa Utilities Board, filed Mar. 2, 1998 at 1 (“Iowa Utilities Board”).

⁴ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 9177-78 ¶ 785; appeals pending sub noms. Texas Office of Public Utility Counsel, et al. v. FCC, et al., Nos. 97-60421, et al. (5th Cir.).

⁵ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, FCC 97-420, rel. Dec. 30, 1997 ¶ 187 (“Fourth Order on Reconsideration”), Errata, DA 98-158, rel. Jan. 29, 1998; appeal pending sub nom. Alenco Communications, Inc., et al. v. FCC, et al., No. 98-1064 (D.C. Cir.).

Commission said:

We are not persuaded by the record before us that state telecommunications networks offer service “indifferently [to] all potential users.” Rather, the evidence indicates that state telecommunications networks offer services to specified classes of entities. Because the record does not contain any credible evidence that a state telecommunications network offers or plans to offer service indifferently to any requesting party, we find that state telecommunications networks do not offer service “directly to the public or to such classes of users as to be directly available to the public” and thus will not be eligible for reimbursement from the support mechanisms pursuant to section 254(h)(1).⁶

The Iowa Utilities Board contends that ICN holds itself out to provide services “to all authorized end users” consisting of “over 500 entities in 1,600 separate locations.”⁷ However, ICN cannot, and does not, say that it offers to provide service indifferently to any requesting party,⁸ because ICN is not a common carrier.⁹

⁶ Fourth Order on Reconsideration ¶ 188 (emphasis added).

⁷ Iowa Utilities Board at 1.

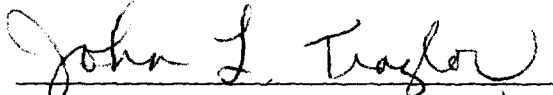
⁸ See Comments of Rural Iowa Independent Telephone Association, filed Mar. 3, 1998 at 3.

⁹ Comments of Ameritech, filed Mar. 4, 1998 at 1; Comments of the United States Telephone Association, filed Mar. 4, 1998 at 2; Opposition of Bell Atlantic Telephone Companies, filed Mar. 4, 1998 at 3.

Accordingly, the Commission should find that ICN is not a common carrier and is not eligible for universal service support.

Respectfully submitted,

U S WEST, INC.

By: 
Robert B. McKenna (RW)
John L. Traylor
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2798

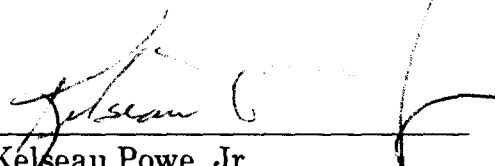
Its Attorneys

Of Counsel,
Dan L. Poole

March 16, 1998

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 16th day of March, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

*Served via hand delivery

(CC9645s-COS/JT/ss)

***William E. Kennard**
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

***Gloria Tristani**
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

***Michael K. Powell**
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

***Harold Furchtgott-Roth**
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

***A. Richard Metzger, Jr.**
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Sheryl Todd**
Federal Communications Commission
8th Floor
2100 M Street, N.W.
Washington, DC 20554

***Kenneth M. Ackerman**
Federal Communications Commission
Room 230
2000 L Street, N.W.
Washington, DC 20036-4924

(3 Copies)
(Including 3x5 inch diskette)

***Irene Flannery**
Federal Communications Commission
Room 6329
2025 M Street, N.W.
Washington, DC 20554

***International Transcription
Services, Inc.**
1231 20th Street, N.W.
Washington, DC 20036

Don Jennings
Michael R. May
Rural Iowa Independent
Telephone Association
Suite 900
Two Ruan Center
601 Locust Street
Des Moines, IA 50309

J.G. Harrington
Dow, Lohnes, Albertson
Suite 800
1200 New Hampshire Avenue, N.W.
Washington, DC 20036-6802

ITCC

Diane C. Munns
William H. Smith, Jr.
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

Clifford J. Ehlinger
Grant Wood Area Education Agency
4401 6th Street, S.W.
Cedar Rapids, IA 52404-4499

Lawrence W. Katz
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

Michael S. Pabian
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Mary McDermott
Linda Kent
Keith Townsend
Larry Sarjeant
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

(CC9645s-JT/ss)
Last Update: 3/16/98